

**AMENDMENT TO COMM. 4E-2 (2012)**  
**February 23, 2012**

**Insert the Attached to Communication 4E-2 (2012):**



# COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE

February 22, 2012

Erie County Legislature  
92 Franklin Street, 4<sup>th</sup> Floor  
Buffalo, New York 14202

**Re: Appropriation of 2011 Funds for Morales Settlement  
and 2012 Risk Retention Fund**

Dear Honorable Members:

Please find attached a resolution requesting your approval to effectuate the \$7 million settlement payment in the Morales matter utilizing, in part, higher than budgeted 2011 sales tax revenues. In addition, the resolution provides authorization to designate the available balance from the 2011 Risk Retention Fund for use in 2012 to cover the projected expenses associated with various litigations and outside legal costs.

If you have any questions, please do not hesitate to contact the Division of Budget and Management.

Sincerely yours,

A handwritten signature in blue ink, reading "Mark C. Poloncarz".

Mark C. Poloncarz, Esq.  
Erie County Executive

MCP

Enclosure

## **MEMORANDUM**

**TO:** Honorable Legislators

**FROM:** Erie County Executive Mark C. Poloncarz

**DATE:** February 22, 2012

**RE:** Appropriation of 2011 Funds for Morales Settlement and 2012 Risk Retention Fund

### **Summary of Recommended Action**

This resolution seeks your authorization to appropriate higher than budgeted 2011 sales tax revenues to effectuate the \$7 million payment in the Morales settlement. In addition the resolution seeks authorization to designate and roll-over the remaining 2011 unexpended balance in the Risk Retention Fund for use in 2012.

### **Fiscal Implications of Proposal**

The resolution will provide funding for the Risk Retention Fund to pay for outside legal counsel and legal judgments and settlements in 2012 as well as the Morales settlement.

### **Reason for Recommendation**

Available 2011 funding is necessary to pay the Morales settlement.

In addition, the resolution requests authorization to designate \$5,000,000 in the available 2011 Risk Retention Fund balance in order to rollover said funds into 2012. This request is consistent with the past requests of the County Executive and approvals by your Honorable Body. In 2010 the Legislature approved the designation of \$6,421,000 in 2009 available Risk Retention Funds to be rolled into 2010 which when combined with the adopted budget of \$3,000,000 provided \$9,421,000 of available funds. Likewise in 2011, the Legislature approved \$5,314,696 in available 2010 Risk Retention Funds which combined with the \$3,000,000 of adopted budget provided \$8,314.696 of available funds.

The request to designate \$5,000,000 for 2012 is reasonable and prudent, and is consistent with my policy to avoid over budgeting in the Risk Retention Fund. Funding will be utilized for 2012 anticipated legal judgments, settlements or other legal costs.

### **Consequences of Negative Action**

The County will incur interest and penalties associated with the Morales settlement order and have to pay a higher amount than necessary. In addition, without the rollover of 2011 funds, the Risk Retention Fund will not have a sufficient balance to pay any other 2012 legal judgments, settlements or other legal costs.

### **Steps Following Approval of Measure**

The Budget Director and Comptroller's Office will effectuate the necessary changes to implement the funding and release a payment in the Morales matter.

## **Proposed Resolution**

**Re: Appropriation of 2011 Funds for Morales Settlement and 2012 Risk Retention Fund**

WHEREAS, the County of Erie is self-insured; and

WHEREAS, the prior County Administration agreed to a \$7 million settlement of a lawsuit brought by Jannette Morales involving her injury at a City of Buffalo pool in August 2009; and

WHEREAS, the County must effectuate the payment of the settlement by March 3, 2012 or face interest and penalty charges; and

WHEREAS, the County received higher than budgeted sales tax revenues in 2011; and

WHEREAS, the County's 2012 budgeted Risk Retention Fund has insufficient funds to effectuate the \$7 million payment; and

WHEREAS, the County's Risk Retention Fund will also require funding replenishment for 2012 to effectuate payment of other claims, judgments and settlements, as well as payments to outside legal counsel, including consultants retained by the County for the Buffalo Bills negotiations; and

WHEREAS, upon approval of this resolution the County will end 2011 with a positive variance in the Risk Retention Fund which can be partially utilized to make the Morales settlement payment as well as designate \$5,000,000 into 2012 for use in the Risk Retention Fund.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature does hereby authorize the \$7 million settlement payment in the Morales matter; and be it further

RESOLVED, that this payment shall be made through appropriating \$5,675,320 in higher than budgeted 2011 sales tax revenues and utilizing \$1,324,680 in 2011 funds available from the Risk Retention Fund; and be it further

RESOLVED, that authorization is hereby provided to appropriate the required funds for payment of the Morales settlement as follows:

Fund 110 - 2011 Budget		
Fund Center 14010 – County Wide Accounts Budget		
Revenue		Increase
Account 402000	3% Sales Tax EC Purposes	3,500,000
Account 402100	1% Sales Tax EC Purposes	<u>2,175,320</u>
	Total Revenue Increase	5,675,320

Fund Center 16020 – Risk Retention

Expense		Increase
Account 555000	General Liability	5,675,320
	Revenue less Expense	0

and be it further

RESOLVED, that authorization is provided to designate the remaining available balance of 2011 funding within the County Attorney's Risk Retention Fund in the amount of \$5,000,000 and rollover said amount into the 2012 Risk Retention Fund; and be it further

RESOLVED, that the Budget Director and Comptroller are hereby authorized to make the necessary budgetary adjustments to effectuate these changes; and be it further

RESOLVED, that certified copies of this resolution be forwarded to the Budget Director, County Attorney and Comptroller.